



2024:DHC:8257-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 21st October, 2024

+ **FAO(OS) (COMM) 229/2024 & CM APPLs. 59628-629/2024**
IIDL (IFCI INFRASTRUCTURE DEVELOPMENT LTD)

.....Appellant

Through: Mr. Kush Chaturvedi, Mr. Syed
Faraz Alam, Mr. Atharva Gaur
& Mr. Aayushman Aggarwal,
Advs.

versus

M/S SUBIR ENGINEERING WORKS (P) LTD. & ANR.

.....Respondents

Through: Mr. Sunil Mund, Mr. Manoj
Kumar, Mr. Vedant Mund &
Mr. Tribhuvan, Adv.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE SHALINDER KAUR

NAVIN CHAWLA, J. (Oral)

1. The present appeal has been filed under Section 37(1)(c) of the Arbitration and Conciliation Act, 1996 (in short, 'the Act') read with Section 13 of the Commercial Courts Act, 2015, challenging the Order dated 19.07.2024 passed by the learned Single Judge of this Court in O.M.P.(COMM.) No.227/2018 titled ***IIDL (IFCI Infrastructure Development Ltd.) vs. Subir Engineering Works (P) Ltd. & Anr.***, whereby, the learned Single Judge has dismissed the petition under Section 34 of the Act filed by the appellant herein.



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2. The above petition before the learned Single Judge was filed by the appellant challenging the Arbitral Award dated 25.01.2018 passed by the learned Sole Arbitrator on a dispute arising between the parties herein in relation to the contract awarded by the appellant to the respondents for construction of the campus of Management Development Institute in Jangipur, Murshidabad District, West Bengal (in short, 'MDI').

3. The challenge of the appellant is with respect to the dispute on the liability for the payment of Value Added Tax (in short, 'VAT'), and whether the rates quoted for the completion of project were inclusive or exclusive of VAT.

4. Admittedly, the original Letter of Intent (in short, 'LOI') dated 07.10.2011, by which the tender for construction of Phase-I of the MDI Building, Jangipur, West Bengal was awarded by the appellant to the respondents, quoted the rate mentioned as Rs.23,72,33,764/- (exclusive of taxes as per the quantities given in the BOQ).

5. The original LOI was thereafter amended on 20.07.2012, whereby the total area to be constructed was revised along with the project cost. The new cost came out to be Rs.90,90,52,672/- for Phase I & Phase II. The revised project cost of Phase-I area was approximately Rs.47.3 crore (exclusive of taxes).

6. It is only when the LOI was for the second time amended on 17.09.2012, mentioning the total cost of project to be Rs.90.91 crore, it further mentioned that the said rate would now be inclusive of VAT, labour cess, and other applicable taxes, except service tax.

7. The appellant contended before the learned Sole Arbitrator that



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in terms of the amended LOI, the liability of the VAT fell on the respondents. This plea of the appellant was rejected by the learned Sole Arbitrator and the said Award has also been upheld by the learned Single Judge of this Court.

8. The learned counsel for the appellant submits that not only the LOI dated 17.09.2012, but also the Clause 1.4 of the Section 1 to the Agreement dated 10.10.2011 executed between the parties, and further Section 2 of the Contract and Clause 2.10 thereof, clearly provide that the rates quoted for the work should be “Inclusive of all taxes”, which would also include the VAT. He submits that these important terms of the Contract have not been considered by the learned Sole Arbitrator as also by the learned Single Judge.

9. On the other hand, the learned counsel for the respondents, who appears on advance notice, submits that the appellant had not relied upon the abovementioned Clauses before the learned Sole Arbitrator as also before the learned Single Judge. He submits that the appellant is trying to set up a new case before this Court which is not permissible.

10. He further submits that terms of the Contract which are being referred to by the learned counsel for the appellant, in fact, form part of the tender documents. The same stood superseded by a specific Contract between the parties in the form of LOIs dated 07.10.2011 and 20.07.2012. The effect of the LOI dated 17.09.2012 has been considered by the learned Sole Arbitrator and by the learned Single Judge and thus, there is no reason for this Court to interfere with the findings.



11. We have considered the submissions made by the learned counsels for the parties.

12. The scope of interference of this Court in an appeal under Section 37 of the Act is rather limited. This Court cannot act as an Appellate Court against the Award passed by the learned Sole Arbitrator to consider the same on merits. The Supreme Court in **MMTC Ltd. v. Vedanta Ltd.**, (2019) 4 SCC 163, while expounding the said dictum held as under:

“14. As far as interference with an order made under Section 34, as per Section 37, is concerned, it cannot be disputed that such interference under Section 37 cannot travel beyond the restrictions laid down under Section 34. In other words, the court cannot undertake an independent assessment of the merits of the award, and must only ascertain that the exercise of power by the court under Section 34 has not exceeded the scope of the provision....”

13. In the present case, the learned Sole Arbitrator has, in the impugned award, considered the effect of the LOI dated 17.09.2012, and rejected the claim of the appellant that it would supersede the claim of VAT of the respondents for the period prior to issuance thereof. The said view found favour with the learned Single Judge in its Impugned judgment.

14. We see no reason to disagree with the above findings.

15. As far as the terms of the Contract relied upon by the learned counsel for the appellant are concerned, the same form part of the Invitation to Tender. Thereafter, the appellant had issued specific LOIs dated 07.10.2011 and 20.07.2012, both of which accept the rates offered by the respondents as being exclusive of taxes. The terms of



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the tender, therefore, stood modified by the parties by specific LOIs. Reliance of the appellant on the above Clauses, therefore, cannot be accepted.

16. In view of the above, we find no merit in the present appeal and the same is, accordingly, dismissed along with the pending application.

17. There shall be no order as to costs.

NAVIN CHAWLA, J

SHALINDER KAUR, J

OCTOBER 21, 2024/ab/sk/VS

Click here to check corrigendum, if any